



Publication 125

September 2006

Injured and Innocent Spouse Relief

The information in this publication is current as of the date of the publication. Please visit our web site at **tax.illinois.gov** to verify you have the most current revision.

This publication is written in the plain English style so the tax information is easier to understand. As a result, we do not directly quote Illinois statutes or the Illinois Administrative Code. The contents of this publication are informational only and do not take the place of statutes, rules, and court decisions. For many topics covered in this publication, we have provided a reference to the applicable section or part of the Illinois Administrative Code for further clarification or more detail. All of the sections and parts referenced can be found in Title 86 of the Code.

About this publication

Publication 125, Injured and Innocent Spouse Relief, provides information and guidance about injured and innocent spouse relief. The objectives of Publication 125 are to

- define "injured spouse relief."
- instruct eligible taxpayers how to apply for injured spouse relief.
- instruct eligible taxpayers how to obtain an individual income tax refund due them as an injured spouse.
- define "innocent spouse relief."
- instruct eligible taxpayers how to apply for innocent spouse relief.

Taxpayer Bill of Rights

You have the right to call the Department of Revenue for help in resolving tax problems.

You have the right to privacy and confidentiality under most tax laws.

You have the right to respond, within specified time periods, to department notices by asking questions, paying the amount due, or providing proof to refute the department's findings.

You have the right to appeal department decisions, in many instances, within specified time periods, by asking for department review or by taking the issue to court.

If you have overpaid your taxes, you have the right, within specified time periods, to a credit (or, in some cases, a refund) of that overpayment.

For more information about these rights and other department procedures, you may write us at the following address:

Problems Resolution Office
Illinois Department of Revenue
PO Box 19014
Springfield, IL 62794-9014

Get forms and other information faster and easier at tax.illinois.gov

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General Information

What is injured spouse relief?

Injured spouse relief is a type of relief a spouse may request when they believe they are not responsible for the outstanding debt of the other spouse.

You should apply for injured spouse relief if

- you filed a joint Form IL-1040, Individual Income Tax Return, with your spouse for a tax year,
- your spouse has unpaid debt (*i.e.*, past due federal tax, state income tax, child support, spousal support, or certain federal debts such as student loans) which you are not legally obligated to pay, and
- all or a portion of your joint Illinois Individual Income Tax overpayment may be offset to satisfy your spouse's unpaid debt.

How do I apply for injured spouse relief?

Illinois does not provide a specific form to request injured spouse relief. If you are an injured spouse filing your original Form IL-1040 using the "married filing jointly" filing status, you should write "Injured Spouse" in red ink across the top of the front page of your Form IL-1040.

If you filed your federal income tax return using the "married filing separately" filing status, you must also file "married filing separately" with Illinois. In this case, you do not need to apply for injured spouse relief.


If you applied for injured spouse relief with the Internal Revenue Service (IRS) using U.S. Form 8379, Injured Spouse Allocation, you must attach this form to your Form IL-1040.

If you have already filed a joint Illinois return, and you receive

- a notice telling you that all or a portion of your refund is being offset to satisfy an Illinois Department of Revenue tax liability, you may request a refund of your portion of the overpayment by filing form IL-1040-X, Amended Individual Income Tax Return, showing your separate tax liability. When you file Form IL-1040-X, write "Injured Spouse" in red ink across the top of the front page and attach a copy of your
 - joint federal tax return,
 - W-2 and 1099 Forms, and
 - U.S. Form 8379, if filed.
- a notice telling you that all or a portion of your refund is being offset to another agency, you must contact that agency for information on obtaining your portion of the refund. The notice of offset you receive will tell you how to contact the other agency.

How do I get a refund if I am granted injured spouse relief?

If we receive your Form IL-1040 or your Form IL-1040-X along with the required supporting documentation, we will refund any overpayment due you as soon as we process your return if you do not have any other outstanding liabilities.

 **Note** We cannot issue a refund of any overpayment that was offset to another agency.

- any other supporting documentation you believe would assist us in determining your eligibility.

Send your completed Form IL-8857, along with supporting documentation to


ILLINOIS DEPARTMENT OF REVENUE
PROBLEMS RESOLUTION DIVISION
P.O. BOX 19014
SPRINGFIELD, ILLINOIS 62794-9014.

What is innocent spouse relief?

Innocent spouse relief is a type of relief a spouse may request when they believe their spouse is solely responsible for paying the Illinois Individual Income Tax liability reported on the couple's joint return.

Generally, spouses who file a joint return for a tax year are each responsible for the entire combined tax liability regardless of which spouse earned the income required to be reported on the return. However, you may apply for innocent spouse relief if

- you filed a joint return with your spouse for a tax year,
- at the time you signed the joint return, you were unaware that your spouse omitted income, claimed false deductions or credits, or otherwise prepared a fraudulent return, and
- you believe the sole responsibility for paying the tax liability belongs to your spouse.

 **Note** If we grant your request for innocent spouse relief, you may not be relieved of the entire liability. You may be held responsible for any tax, penalty, and interest on your separate portion of the tax liability.

How do I get a refund if I am granted innocent spouse relief?

If you are due a refund, Form IL-8857 serves as your claim for refund of any overpayment due you as a result of innocent spouse relief. You do not have to file any other forms to request a refund.

There is no time limit for making an innocent spouse claim. However, we will only issue a refund for a tax year if we receive your Form IL-8857 within three years after the extended due date of your original Form IL-1040, three years after the date you filed your original Form IL-1040, or one year after you paid the Illinois tax, whichever is latest.

How do I apply for innocent spouse relief?

You must complete a separate Form IL-8857, Request for Innocent Spouse Relief, for each year you are requesting relief. For each request, you must attach the following items, as applicable

- a copy of your original U.S. and Illinois income tax returns,
- a copy of any amended U.S. and Illinois income tax returns,
- a copy of U.S. Form 8857, Request for Innocent Spouse Relief, if you requested relief from the IRS,
- any final determination of your federal or Illinois tax liability that you received from the IRS, Illinois Department of Revenue, or a court of law, including any grant or denial of innocent spouse relief, and

Office locations

Maine North Regional Building
9511 Harrison Street FA 203
Des Plaines, Illinois 60016-1563
847 294-4200

200 South Wyman Street
Rockford, Illinois 61101-1237
815 987-5210

James R. Thompson Center
Concourse Level
100 West Randolph Street
Chicago, Illinois 60601-3274
312 814-5232

Willard Ice Building
101 West Jefferson
Springfield, Illinois 62702
800 732-8866
217 782-3336

15 Executive Drive
Business Center One, Suite 2
Fairview Heights, Illinois 62208-1331
618 624-6773

2309 W. Main
Suite 114
Marion, Illinois 62959-1196
618 993-7650

Out-of-state office location

Century Plaza
45 Eisenhower Drive
Suite 2
Paramus, New Jersey 07352-1416
201 845-0255

**For information
or forms**

Visit our web site at tax.illinois.gov

Call us at **1 800 732-8866** or **217 782-3336**.

Call our TDD (telecommunications device for the deaf) at **1 800 544-5304**.

Write us at Illinois Department of Revenue, P.O. Box 19044, Springfield, IL 62794-9044.

Call our 24-hour Forms Order Line at **1 800 356-6302**.



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